

tion and amending sections 6501 and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6501, 6511, 7454 of this title.

**CHAPTER 42—PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS**

Subchapter	Sec. <sup>1</sup>
A. Private foundations .....	4940
B. Black lung benefit trusts .....	4951
C. Political expenditures of section 501(c)(3) organizations .....	4955
D. Abatement of first and second-tier taxes in certain cases <sup>2</sup> .....	4961

AMENDMENTS

1987—Pub. L. 100-203, title X, §10712(c)(7), (9), Dec. 22, 1987, 101 Stat. 1330-467, substituted in chapter heading “AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS” for “BLACK LUNG BENEFIT TRUSTS”, struck out item for subchapter C “Abatement of first and second tier taxes in certain cases”, and added items for subchapters C and D.

1984—Pub. L. 98-369, div. A, title III, §305(b)(3), July 18, 1984, 98 Stat. 784, substituted “Abatement of first and second tier taxes in certain cases” for “Abatement of second tier taxes where there is correction during correction period” in item for subchapter C.

1980—Pub. L. 96-596, §2(c)(3), Dec. 24, 1980, 94 Stat. 3474, added item for subchapter C.

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in chapter heading inserted “; BLACK LUNG BENEFIT TRUSTS” after “FOUNDATIONS”, and added items for subchapters A and B.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added chapter heading “PRIVATE FOUNDATIONS”.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 275, 509, 2055, 6104, 6161, 6211, 6212, 6213, 6214, 6344, 6405, 6501, 6503, 6511, 6512, 6684, 6862, 6871, 7422 of this title.

**Subchapter A—Private Foundations**

Sec.	
4940.	Excise tax based on investment income.
4941.	Taxes on self-dealing.
4942.	Taxes on failure to distribute income.
4943.	Taxes on excess business holdings.
4944.	Taxes on investments which jeopardize charitable purpose.
4945.	Taxes on taxable expenditures.
4946.	Definitions and special rules.
4947.	Application of taxes to certain nonexempt trusts.
4948.	Application of taxes and denial of exemption with respect to certain foreign organizations.

AMENDMENTS

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, added subchapter A heading and designated sections 4940 to 4948 as subchapter A.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added analysis of sections.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4962, 7871 of this title.

<sup>1</sup> Section numbers editorially supplied.

<sup>2</sup> So in original. Does not conform to subchapter heading.

**§ 4940. Excise tax based on investment income**

**(a) Tax-exempt foundations**

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

**(b) Taxable foundations**

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

**(c) Net investment income defined**

**(1) In general**

For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

**(2) Gross investment income**

For purposes of paragraph (1), the term “gross investment income” means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

**(3) Deductions**

**(A) In general**

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

**(B) Modifications**

For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

**(4) Capital gains and losses**

For purposes of paragraph (1) in determining capital gain net income—